

HIGHLIGHTS

INCOME TAX

- + PAN or Aadhaar mandatory in certain circumstances
- + Change of authority vested with powers to conduct proceedings related to application in Form 10A
- + Circular regarding use of functionality under section 206AB and 206CCA of the Income Tax Act, 1961
- + Guidelines for compulsory selection of returns for complete scrutiny

GOODS AND SERVICE TAX

- + Extension of due date for filing Form GSTR-3B for the month of April 2022
- + Extension of due date for making payment of tax under QRMP scheme for the month April 2022
- + Waiver of late fees for non-filing of quarterly return in Form GSTR-4 by composition dealers - FY 20-21
- + No coercive actions to be taken for deposit of money during search, inspection or investigation

CUSTOMS

- + Due dates for mandatory remittances through Electronic Cash ledger extended

EOU and SEZ

- + Suggestions / Proposals from members to fillip services exports from India

CORPORATE LAW

- + Extension of due dates for conducting Annual General Meeting ('AGM')/ Extra Ordinary General meeting (EGM) through video conferencing
- + Extension of due date for filing of Form 11 for Limited Liability Partnership (LLP) firms
- + Amendment regarding obtaining government approval under the Foreign Exchange management (Non-debt Instruments) Rules, 2019
- + Amendment regarding obtaining government approval for transactions with parties from a country which shares a land border with India
- + Extension of due date for filing of Form CSR-2 for FY 2020-21

Quick bit

Service Tax

Where the employees of the overseas group company / companies were deployed on secondment to the group company in India, are the overseas company providing manpower services to the Indian Company. The Hon'ble Supreme Court¹ held the following:

- One of the cardinal principles of interpretation of documents is that the nomenclature of any contract, or document, is not decisive of its nature. An overall reading of the document, and its effect, is to be seen by the courts.
- There is not one single determinative factor, which the courts give primacy to, while deciding whether an arrangement is a contract of service or a contract for service. This court has consistently applied one test: substance over form.
- The following observations were made by the Hon'ble Supreme Court with respect to the employee agreements of the seconded employees:
 - ✓ For all appearances, the seconded employees, for the duration of her or his secondment, is under the control of the assessee. Yet, the fact remains that they are on the pay rolls of their overseas employer.
 - ✓ The secondment is a part of the global policy of the overseas employer, loaning their services on temporary basis. Upon the cessation of the term of secondment, they return to their overseas employer.
 - ✓ The letter of understanding between the assessee and the seconded employee nowhere states that the latter would be treated as the former's employees after the seconded period.
 - ✓ Their terms of employment even during the secondment are in accord with the policy of the overseas company, who is their employer.
- The other way of looking at the arrangement is the economic benefit derived by the assessee, which also secures specific jobs or assignments, from the overseas group companies, which result in its revenues. The quid pro quo for the secondment agreement, where the assessee has the benefit of experts for limited periods, is implicit in the overall scheme of things.
- The assessee for the relevant period was a service recipient of the overseas group company, which can be said to have provided manpower supply service. However, the invocation of the extended period of limitation was unjustified and unreasonable. Resultantly, the assessee is held liable to discharge its service tax liability for the normal period or periods.

¹ CCE v. Northern Operating Systems - Civil Appeal No. 2289 of 2021, Supreme Court; dated 19.05.2022.

MONTHLY COMMUNIQUE

- On the question revenue neutrality, the Hon'ble Supreme Court has mentioned that the order of SRF and Coca Cola merely affirmed the rulings of CESTAT, and their precedential value is of a limited nature.

The said judgement will have some influence under the Goods and Services Laws and the tax under reverse charge mechanism on secondment of employees under an agreement will need re-examination.

Income Tax

The Hon'ble Madras High Court ('HC') has, in the case of Tamil film director and actor Surya² ('Taxpayer') held that prosecution proceedings initiated in the Taxpayer's case cannot be quashed and his trial should continue before the concerned Economic Offences Court. Criminal prosecution proceedings were initiated in the Taxpayer's case on the basis that he did not:

1. File his income-tax return when called for;
2. Pay the advance tax liability when called for; and
3. Pay the income-tax demand pursuant to conclusion of assessment proceedings.

Here the complaints before the HC mentioned that despite numerous notices being served, the Taxpayer had not complied with the notices despite additions being made on account of search and seizure actions. The HC rejected the Taxpayer's contentions that the prosecution proceedings fail based on the order of the Chennai Income-tax Appellate Tribunal (ITAT) that had held the orders of the tax officer are barred by time. The HC held as follows:

1. The ITAT quashed the orders not on merits, but only based on technical grounds of limitation. Since the rest of the matters in the case became merely academic, the ITAT did not go into the details to pass a ruling on the other issues on merits.
2. When the matter was not decided on merits, but only on technical ground of limitation, the Taxpayer cannot seek to quash the proceedings in on the ground that the ITAT had set aside the assessment orders.
3. When it comes to quashing criminal proceedings, uncontroverted averments in the complaint without any addition or subtraction should be investigated to examine whether an offence can be made out or not. Applying this yardstick, the Revenue had made out a prima facie case to proceed against the Taxpayer for the offences alleged in the complaint.
4. Further, the ITA empowers the HC to presume culpable mental state of the accused, unless, the accused shows that he had no such mental state with respect to the act charged as an offence in the prosecution.

² SJ Surya v. DCIT (Crl.O.P.No.29914, 29915, 29916, 29917, 29918 & 29919 of 2015 and M.P.Nos.1 & 2 of 2015) dated 26.05.2022

MONTHLY COMMUNIQUE

INCOME TAX

+ **PAN or Aadhaar to be mandatory in certain circumstances:** The Income-tax Act, 1961 ('ITA') empowers the Central Board of Direct Taxes ('CBDT') to prescribe the class of persons who are required to obtain a PAN for undertaking certain transactions. The CBDT has now prescribed that person entering into the below transactions should apply for PAN at least 7 days prior to the intended date of undertaking such transaction:

- a. Cash deposit or deposits aggregating to Rs. 20 lakhs or more in a financial year, in one or more account with a bank including a co-operative bank or a Post Office;
- b. Cash withdrawal or withdrawals aggregating to Rs. 20 lakhs or more in a financial year, in one or more account with a bank including a co-operative bank or a Post Office;
- c. Opening of a current account or cash credit account by a person with a bank including a co-operative bank or a Post Office.

Further, the person entering into above transactions has to mandatorily quote either his PAN or Aadhaar number on the documents relating to the above transactions. This PAN or Aadhaar will be authenticated by the banker or the Post Master General, as the case may be.

Notification No. 53 of 2022, dated 10th May, 2022

+ **Change of authority vested with powers to conduct proceedings related to application in Form 10A:** New procedures for approval, rejection or cancellation of registration for charitable and similar institutions, empowered the Director of Income-tax (CPC) Bengaluru and Commissioner of Income Tax (Exemptions) Bengaluru to accord such approvals, rejections or cancellations. These provisions are now amended to empower only the Director of Income Tax (CPC), Bengaluru as the only authority with these powers. Therefore, going forward, all applications in Form 10A shall lie with the Director of Income Tax (CPC), Bengaluru.

Notification number 52 of 2022, dated 9th May, 2022

+ **Circular regarding use of functionality under section 206AB and 206CCA of the Income Tax Act, 1961:** The ITA provides for a higher rate of TDS and TCS respectively where the payment is made / received from an income-tax return non-filer ('specified person'). The Income-tax Department ('ITD') had provided an online functionality to enable taxpayers to identify whether the recipient / payer is a specified person and the TDS / TCS on payments / receipts should hence be undertaken at a higher rate. These provisions were amended by Finance Act 2022 to enhance the threshold for a person to qualify as a 'specified person'. The ITD has updated the functionality to reflect this higher threshold.

Circular No 10 of 2022 dated 17th May, 2022

MONTHLY COMMUNIQUÉ

- + **Guidelines for compulsory selection of returns for complete scrutiny:** The CBDT has prescribed guidelines to officers to conduct complete scrutiny of returns filed by persons who satisfy the conditions specified in the communication. An illustrative list of such instances include cases where:
 - Income-tax surveys have been conducted;
 - A search and seizure has been conducted;
 - Re-assessment proceedings have been initiated pursuant to search and seizure or survey conducted on the taxpayer on or after 1st April, 2021;
 - Tax officers have formally called for filing of income-tax returns but such returns have not been furnished;
 - Registration / approval for tax exemption, weighted deductions under has not been granted or have been cancelled but yet the tax exemption / weighted deductions are made in the income-tax return.
 - There is a recurring addition involving a 'question of law' and the said addition exceeds Rs. 25 lakhs in the metro charges and Rs. 10 lakhs in the non-metro charges.

Guidelines for compulsory selection of return for complete scrutiny dated 11th May, 2022

GOODS AND SERVICES TAX (GST)

- + **Extension of due date for filing Form GSTR-3B for the month of April 2022:** The due date for filing of FORM GSTR-3B for the month April 2022 has been extended by 4 days i.e. from May 20th, 2022 to May 24th, 2022.

Notification No. 05/2022 – Central Tax dated 17.05.2022

- + **Extension of due date for making payment of tax under QRMP (scheme in FORM GST PMT-06 for April 2022):** The due date of payment of tax in FORM GST PMT-06 for the month of April 2022 by taxpayers who are registered under QRMP (Quarterly Return Monthly Payment) scheme has been extended to May 27, 2022.

Notification No. 06/2022 – Central Tax dated 17.05.2022

- + **Waiver of late fees for non-filing of quarterly return in Form GSTR-4 by composition dealers for the FY.2020-21:** The CBIC has waived off the late fee payable for the period 01.05.2022 to 30.06.2022 for delay in filing of quarterly return in FORM GSTR-4 by the composition tax payers for the financial year 2021-22. Delay in filing of Form GSTR-4 beyond 30.06.2022 will attract a late fee of Rs. 100/- per day (upto Rs. 5,000/-)

Notification No. 07/2022 – Central Tax dated 26.05.2022

MONTHLY COMMUNIQUÉ

- + **No coercive actions to be taken for deposit of money during search, inspection or investigation:** Taking cognizance of the instances of force / coercion by the tax officers to make 'recoveries' during the course of search or inspection or investigation, the CBIC has instructed that no recoveries are to be made unless the amount is payable in pursuance of an order or otherwise becomes payable under the GST laws. Tax Officers have further been instructed to inform the taxpayers regarding the provisions of voluntary payment in Form DRC-03. Strict disciplinary action is proposed to be taken against the officer, in case any complaint is received from the taxpayer regarding the use of force or coercion for getting the amount deposited during the search, inspection or investigation.

Instruction No. 01/2022-23 [GST – Investigation] dated 25.05.2022

CUSTOMS

- + **Due dates for mandatory remittances through Electronic Cash ledger extended:** Provisions of mandatory deposit of sums into electronic cash ledger, which is to be used for remittance of duties of customs (including IGST, GST Compensation Cess, other cesses, surcharge, interest, penalty, fees and any other sum payable under Customs Act or any other law being in force), has been postponed by the Board till 29.11.2022. Hitherto, the said provisions were to be applicable w.e.f. 01.06.2022. To avoid any further confusions, Board has issued a notification in terms of Section 51A(4) of Customs Act, 1962, to extend the exemption to all classes of persons and all categories of goods, from the applicability of above referred provisions till 29.11.2022.

Notification No. 47/2022 – Customs (NT) dated 31.05.2022 and Notification No. 48/2022 -Customs (NT) dated 31.05.2022

EOU & SEZ

- + **Suggestions / Proposals from members to fillip services exports from India:** In order to discuss the roadmap for achieving US\$350 billion of services exports during current financial year 2022-23 which will be chaired by Hon'ble Union Minister of Commerce and Industry to boost services exports from India, EPCES has invited members to share any issues/ challenges/impediment faced in India or current/potential foreign markets in export of their respective services. Suggestions/Proposals are also welcome regarding the measures/steps to be taken so as to promote the Indian services exports. Members are requested to send the inputs to epces@epces.in / ddg@epces.in / dg@epces.in as soon as possible so that they can be collated and sent to the office of Hon'ble CIM.

Circular no.397 dated 11.05.2022

CORPORATE LAW

- + **Extension of due dates for conducting Annual General Meeting ('AGM')/ Extra Ordinary General meeting (EGM) through video conferencing:** The Ministry of Corporate Affairs ('MCA') in continuation to its previous general circulars issued in respect to allowing companies to hold AGM through video conferencing or other audio-visual means has further extended the period from 30.06.2022 to 31.12.2022. It is also clarified that this Circular shall not be construed as conferring any extension of time for holding of AGMs by the Companies under the Companies Act, 2013 and the Companies which have not adhered to the relevant timelines shall be liable to legal action under the appropriate provisions of the Act.

Similarly, MCA extended the timelines for conducting EGMs through video conferencing or other audio-visual means or transact items through postal ballot from 30.06.2022 to 31.12.2022.

General Circular No.2/2022 dated 05.05.2022 ; General Circular No.3/2022 dated 05.05.2022

- + **Extension of due date for filing of Form 11 for Limited Liability Partnership (LLP) firms:** MCA vide General Circular dated 27.05.2022 has allowed LLPs to file e-Form 11 (Annual return of LLP's) for financial year 2021-22 without paying additional fees from 30.05.2022 to 30.06.2022.

General Circular No.4/2022 dated 27.05.2022

- + **Amendment regarding obtaining government approval under the Foreign Exchange management (Non-debt Instruments) Rules, 2019:**

- a. Amendments to Form SH-4 for transfer of shares

MCA has notified the Companies (Share Capital and Debentures) Amendment Rules, 2022 on 04.05.2022. The rules have mandated the Companies to include a declaration as to whether the transferee is required to obtain a government approval prior to transfer of shares under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Notification number G.S.R.335(E) dated 04.05.2022

- b. Amendments to Companies (Incorporation) Second Amendment Rules 2022

MCA vide its notification dated 20.05.2022 has notified the Companies (Incorporation) Second Amendment Rules 2022. The rules have prescribed the new format for Form INC-9 for declaration by subscribers and first Directors. The updated format requires the first subscribers and Directors to give a declaration prior to the subscription of shares as to whether they are required to obtain a government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019.

Notification G.S.R. 363(E) dated 20.05.2022



MONTHLY COMMUNIQUE

+ **Amendment regarding obtaining government approval for transactions with parties from a country which shares a land border with India:**

a. Amendments to Companies (Prospectus and allotment of Securities) Amendment Rules, 2022

MCA has notified Companies (Prospectus and Allotment of Securities) Amendment Rules, 2022 on 05.05.2022 requiring companies to obtain a government approval under the Foreign Exchange Management (Non-debt Instruments) Rules, 2019 before an offer or invitation to subscribe in any securities by a body corporate incorporated in a country which shares a land border with India. Further, the approval has to be attached to the private placement offer and application form. Part B of PAS-4 is amended to give the effect of the same.

Notification number G.S.R.338(E) dated 05.05.2022

b. Amendments to Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022

MCA has notified Companies (Compromises, Arrangements and Amalgamations) Amendment Rules, 2022 vide notification dated 30.05.2022 thereby amending Companies (Compromises, Arrangements and Amalgamations) Rules, 2016 by inserting sub-rule (4) in Rule 25A and a new form No. CAA-16. Pursuant to the amendment, in case of a compromise or an arrangement or merger or demerger between an Indian company and a company or body corporate which has been incorporated in a country which shares land border with India, a declaration in Form No. CAA-16 will be required at the stage of submission of application under section 230 of the Companies Act.

Notification G.S.R. 401(E) dated 30.05.2022

+ **Extension of due date for filing of Form CSR-2 for FY 2020-21:** MCA has notified the Companies (Accounts) Third Amendment Rules, 2022 on 31.05.2022. The rules have extended the due date for filing Form CSR-2 for FY 2020-21 to from 31.05.2022 to 30.06.2022. Further, for FY 2021-22, MCA has required the companies to separately file the Form CSR-2 on or before 31.03.2022 after filing Form AOC-4/AOC-4 XBRL/AOC-4 NBFC (Ind AS), as the case may be, instead of filing it as addendum to the AOC-4 Form.

Notification number G.S.R. 407(E) dated 31.05.2022

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